

CILENTI & COOPER, PLLC

ATTORNEYS AT LAW
60 East 42nd Street - 40th Floor
New York, New York 10165

Telephone (212) 209-3933
Facsimile (212) 209-7102

October 17, 2022

BY ECF

Honorable Lorna G. Schofield, U.S.D.J.
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

Re: ***Delgado, et. al. v. 419 E. 70th Cafe Inc., et al.***
Case No. 15 Civ. 3404 (BMC)

Dear Judge Schofield,

An initial conference in the above referenced matter is scheduled before Your Honor on November 2, 2022 at 4:10 p.m. The parties have conferred and the following is a letter pursuant to the Court's directives of September 15, 2022.

1. Brief Description of the Case

This is an action for unpaid wages under the Fair Labor Standards Act, as amended, 29 U.S.C. §§ 201, *et seq.*, ("FLSA"), and the New York Labor Law, §§ 190, *et seq.*

Ms. Delgado alleges she was employed at defendants' restaurant for the time period October 2020 through July 2022. She alleges that she worked approximately sixty (60) hours per week and was paid straight time, without an overtime premium. Defendants deny the allegations stated in Ms. Delgado's Complaint.

2. Subject Matter Jurisdiction

Subject matter jurisdiction is based upon Section 216 of the FLSA, 29 U.S.C. § 216(b), as well as 28 U.S.C. §§ 1331, 1337, and 1343. To the extent the New York Labor Law affords plaintiff greater protections, plaintiff asks the court to exercise supplemental jurisdiction over her state law claims pursuant to 28 U.S.C. § 1367. The parties agree that the case is properly venued in the Southern District, where 419 E. 70th Cafe Inc.'s principal place of business is located and Plaintiff worked at the principal place of business location.

3. Contemplated Motions

The plaintiff contemplates a pre-answer motion to dismiss defendants' counterclaims and will file a separate letter pursuant to the court's individual practices, Section III(C)(2).

4. Discovery

The parties have not exchanged discovery. The parties expect to exchange documents and records and attempt to resolve the case prior to conducting depositions.

5. Damages Alleged

Plaintiff's counsel has performed preliminary damages calculations and estimates that plaintiff is owed approximately \$1,000 in minimum wage violations and \$15,000 in owed overtime premiums. Plaintiff is also owed approximately \$16,000 in liquidated damages. Plaintiff has a small claim for unpaid spread of hours premiums. As of 2011, the New York Wage Theft Prevention Act required notice of hours, hourly rate, etc., on a weekly wage statement as well as an annual notice. The penalty for not complying with those requirements is \$5,000. In addition to overtime compensation and spread of hours premiums, plaintiff is owed and will be entitled to collect pre-judgment interest and attorneys' fees and costs, all of which are accruing. At this juncture attorneys' fees are less than ten thousand dollars; Mr. Cooper's hourly rate has been approved at \$350.00 to \$400.00 per hour.

6. Settlement Discussions

The parties have not yet discussed settlement to date. The parties respectfully ask the Court to refer this case to the Southern District's Mediation Program.

7. The Parties' Other Request

The parties also respectfully ask that the November 2, 2022 Initial Conference be adjourned by sixty days or until the parties complete mediation. The parties believe that such a referral to the Mediation Program and adjournment of Initial Conference will be beneficial toward a resolution.

Thank you for your time and attention to this matter.

Respectfully submitted,

CILENTI & COOPER, PLLC

By: *Peter H. Cooper*

60 East 42nd Street – 40th Floor
New York, New York 10165
Telephone (212) 209-3933
Attorneys for Plaintiff

SEO LAW GROUP, PLLC

By: *Diana Seo*

136-68 Roosevelt Avenue – Suite 726
Flushing, New York 11354
Telephone (718) 500-3340